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June 26, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 23, 2007

Case Number: TSO-0467

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored at this time.

I. BACKGROUND

The Individual has been employed at a DOE facility in a position that requires him to hold an access authorization. The Individual reported to the local security office (LSO) at his facility that he had ongoing contact with a female foreign national via email. As a result, the Individual was the subject of a personnel security interview (PSI) in November 2004, and again in September 2005 and May 2006. See DOE Exhibits ("Ex.") 7, 8, and 9.

During the PSIs, the Individual disclosed that his first contact with the foreign national was in June 2002. DOE Ex. 7. During the PSIs, the Individual stated that the relationship began when he attempted to evangelize to women who worked on a cybersex website. *Id.* The Individual stated that the foreign national told him she worked on the cybersex website in order to raise sufficient funds to satisfy debts she incurred in a car accident many years ago. DOE Ex. 8. He stated that he provided the foreign national with money to pay her debts in order to keep her from working on the cybersex website. DOE Exs. 7 and 8. The Individual stated that he sent the foreign national money each month in order to help her with her living expenses. DOE Ex. 8. The Individual added that he had paid for the foreign national to be trained as an aerobics instructor. *Id.* He also stated that he persuaded the foreign national to cease working on the cybersex website, but that a few months later she reappeared on the site after breaking her leg. *Id.* The Individual stated that he paid for the foreign national's resulting medical costs. *Id.* During the May 2006 PSI, the Individual stated that up to that point, his total financial support to the foreign national since June 2002 was approximately \$70,000. DOE Ex. 9. He also stated that he intended to end the relationship in June 2006, its four-year anniversary, and that he would send her one final "gift" of \$10,000 for her and the child she was expecting. *Id.*

In December 2006, the DOE notified the Individual that his continuing relationship with a foreign national and the information discussed in the three PSIs created security concerns under 10 C.F.R. § 710.8(l). (Criterion L). Notification Letter, December 12, 2006. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual's Letter, December 30, 2006. In his response, the Individual stated that he ended the relationship in June 2006. *Id.* The Individual stated his relationship with the foreign national grew out of his desire to evangelize to her and share his faith. He added, "I hope I have not given you the impression that this separation was easy for me. It was the hardest thing I have ever had to do." *Id.*

The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer. A hearing was held in this matter. Both the Individual and the DOE counsel submitted documents, referred to as "Indiv. Ex." and "DOE Ex.," respectively. At the hearing, the Individual, representing himself, presented his own testimony as well as the testimony of his friend, his supervisor, two church colleagues, and his mother. The DOE counsel did not bring forth any witnesses.

II. EVIDENCE PRESENTED

A. Documentary Evidence

The Individual submitted several documents into the record. In a July 2004 email to the LSO, the Individual disclosed his ongoing contact with a foreign national. Indiv. Ex. A. In three emails dated June 2006, November 2006, and December 2006, the foreign national stated, *inter alia*, that she had not heard from the Individual and knew that he would not respond to her emails. Indiv. Ex. C. In his responses to a Letter of Interrogatory from the LSO, the Individual stated that he communicated often with the foreign national via email. Indiv. Ex. B. He also stated that he never disclosed to the foreign national where he worked or the type of work that he did. *Id.*

In addition to the documents listed above, the Individual submitted copies of various financial records, including itemized bank records from June 2006 through February 2007, indicating his last withdrawal of funds for the foreign national took place in June 2006. Indiv. Exs. D, E, F and H. The Individual also submitted copies of his charitable donations, demonstrating that he donated more than \$16,000 to his church and nearly \$6,000 to two other charities in 2006. Indiv. Ex. G. Finally, the Individual submitted a copy of a workbook from his church outlining the church's mission and a copy of the Bible. Indiv. Exs. I and J.

B. Hearing Testimony

1. The Individual

The Individual discussed his relationship with the foreign national. He stated that he initially entered the cybersex website after returning from a church conference in 2002. According to the Individual, he learned at the conference that the church's policy regarding personal evangelism

had changed and that such evangelism was now encouraged. Tr. at 99. The Individual described his experience as follows:

I come back, and I'm ready to do this. I'm excited. I want to share, but I'm frustrated in part...most of my colleagues at work are Christians...I don't know my neighbors real well. I live in a little apartment complex...So I'm frustrated. I don't have anywhere to go with this. I'm kind of praying, you know, that God will bring somebody into my life. I have a Hotmail account, kind of my backup email...When I signed up for that thing, I made a mistake. I put myself down as a [young] single male. So I get all the trash you can imagine...I'm getting come-ons on there...It just occurred to me. Here's somebody that wants to talk. And realizing that they probably don't know Jesus where they are, here's a field that I can go into.

Tr. at 100-101. He stated that he "met" the foreign national in a cybersex chat room and spoke with her and got her interested in Christianity. Tr. at 105.

The Individual discussed the amount of money he provided to the foreign national. He stated that over the course of the four years he communicated with her, he sent her approximately \$80,000. Tr. at 119. According to the Individual, his annual salary is \$90,000. Tr. at 121. He stated that he contributes approximately \$16,000 per year to his church and makes another \$8,000 to \$9,000 in contributions to other charities each year. *Id.* He stated that he continued to make those donations during the period he provided financial assistance to the foreign national. *Id.* He added that the financial support he provided to her came from his savings account. Tr. at 122.

The Individual stated that he did not communicate with the foreign national from October 2005 to June 2006 due to his increasing, and time-consuming, responsibilities in his church. Tr. at 114-116. He stated that she became pregnant during that time and could not keep working. According to the Individual, he provided her with enough money to support herself through the pregnancy, but then ended the relationship because he could not keep fixing her mistakes. *Id.* The Individual stated that he usually offered her money. According to the Individual, the only time the foreign national asked him for money was when she was trying to obtain a job as an aerobics instructor and needed help paying for the required training. Tr. at 116-117.

The Individual stated that the last time he emailed the foreign national was in June 2006. Tr. at 110. He stated that in that email, he informed her that he would no longer be communicating with her. According to the Individual, she continued to email him until December 2006, at which point he blocked his email accounts from receiving any more emails from her address. Tr. at 110-111. According to the Individual, he originally intended to stop providing financial support to the foreign national but remain friends with her, but changed his mind when she became pregnant. Tr. at 112.

The Individual added that he had not checked the cybersex website to see if the woman has resumed working on the site. He stated that he does not want to know. Tr. at 118. He added that even if he somehow found out that she was back on the website, he would not send her

additional money. He stated that “she continues to make these bad choices. I keep stepping in. She’s not learning. You know, once or twice, you know, I’m willing to do it. But the pregnancy was the last straw. She’s not making the right choices. She put herself in a bad situation.” Tr. at 118-119. Regarding whether he is curious about the foreign national and her child, the Individual stated, “I have tried very hard to put that out of my mind.” Tr. at 128.

According to the Individual, he continues to evangelize, but no longer uses the internet to do so. Tr. at 122. He stated that, in addition to the charitable contributions he makes, he now focuses his efforts on his church and is actively involved with the church’s youth camps. *Id.*

The Individual stated that his relationship with the foreign national is not a secret. Tr. at 126. He stated that his parents and friends, as well as his youth group, are aware of the situation. He added that he is not embarrassed by his involvement with the foreign national and it is not something he can be blackmailed over. Tr. at 127.

According to the Individual, he did question his own judgment in this matter, but stated that he “still think[s] it was the right think to do.” He added,

I may have given her more support than I should have. Because what it came down to and the reason I ended the relationship wasn’t the pregnancy [with her ex-boyfriend]. But I was shielding her from the effects of what she did...She was continuing to make mistakes...But I stepped in every time one of these [bad] judgments came up.

Tr. at 106. The Individual was questioned about how he knew the foreign national was telling him the truth about her situation and finances. He stated, “some of it, I had to take [at] face value. You know, I had to trust her.” Tr. at 109. He added that he and the foreign national communicated via video chat and that he could see her facial expressions and see how distressed she was when discussing her situation with him. *Id.* The Individual stated that he did experience some difficulties in communicating with the woman because he did not speak her language and she was not fluent in English. He stated, “she can write English to a certain extent. You know, I can’t do [her language] at all, but you have to read between the lines. You have to do a lot of deciphering.” Tr. at 110. When asked whether he believed he was manipulated, he stated that, although he does not have complete proof that the foreign national was always truthful with him about her financial situation, he “wasn’t ever in a position where [he] was going to compromise any kind of security information or anything like that.” Tr. at 131. Finally, the Individual stated that he did not intend to provide her with as much financial assistance as he did. He stated,

It was never my intention to give her anything more than getting her off that [cybersex] site. But one thing led to another, you know, and I couldn’t stand to see her, you know, go through life with that leg [injured] the way it was...But at some point I had to realize that this relationship was not going where it needed to go, that she wasn’t growing and that she wasn’t going to as long as I kept picking up he tab. So I had to end it.

Tr. at 137-138.

The Individual stated that he understood why his involvement with the foreign national was a security concern to DOE. He stated,

I didn't [understand the concern] at first so much. And that's where I messed up. In my enthusiasm, you know, I forgot the criteria on continuing foreign contact with foreign nationals. So I didn't report this until a couple years down the road when I read the annual...security refresher that we do...I said, whoops, I'm in continuing contact with a foreign national...So once I realized where I had messed up, I haven't hidden that from DOE...And even after two personnel security interviews, I didn't really still understand the ramifications until I went down [for a third personnel security interview]...and [the interviewer] sat down with 10 C.F.R. 710 and went through it with me.

Tr. at 129-130. The Individual stated that he now understands the concern and he described it as follows:

In my mind, it's because anytime you reach out to someone, you enter into a relationship. You build a friendship there. There was a risk that somebody could grab her over in that country and contact me and say, 'Look, unless you do this and this, we'll hurt her. We'll do something to her.' You know, that is the concern that DOE had in that continuing relationship...you know, certainly I wasn't selling secrets. The money was going the other way.

Tr. at 130-131.

2. The Individual's Friend

The Individual's Friend testified that he has known the Individual since 1997. Tr. at 10. They are co-workers and also often socialize together outside of work. Tr. at 8-9. The friend stated that, although he is not personally involved in the Individual's church, his daughter is involved in the church's youth group run by the Individual. Tr. at 9. He described the Individual's church as "a very small, close group." *Id.* He added, "I like it. I would like to have my daughter be in there. She can learn something good from that group." *Id.* The Individual's friend stated that it was his understanding that the Individual's church encouraged its members to make generous charitable contributions. He stated, "I believe they try to teach – to make people give themselves to everybody else, basically whatever they have. Give it to charity or whatever." Tr. at 10.

The Individual's friend stated that he was aware of the Individual's relationship with the foreign national. He stated, "there's a lady friend...that [the Individual] has communicated to and helped her financially when she's in bad times. And he asked her to kind of – basically, [he tried] to convert her...[the Individual believed that] if he can help her over there, she can spread the word of God for him over there more effectively.... Tr. at 14. The Individual's friend stated that he did not believe the Individual was naïve with respect to the foreign national. He stated, "[the Individual] believed that if he can convert one person in his lifetime, he got it done...the [act] of giving [for] him is the act of practicing what he believes." Tr. at 23-24.

The Individual's friend stated that he believed the Individual to be honest, reliable and trustworthy. Tr. at 20. He stated that he had other friends who give to charities, but that he did not know anyone as generous as the Individual, and he added that the Individual did not spend much money on himself. Tr. at 15, 20. Finally, the Individual's friend stated that he did not believe that the Individual was naïve or gullible. He stated, "[the Individual is] pretty sharp...he would think very thoroughly...he may give too much money away or whatever away, his time away for somebody else, but I don't think he's naïve." Tr. at 22.

3. The Individual's Supervisor

The Individual's supervisor stated that he and the Individual do not socialize outside of work. Tr. at 25. He added, however, that he and the Individual had discussed the Individual's work at his church. Tr. at 26. The supervisor testified that he was aware that the Individual was "helping out" a woman financially and that he was aware of how the Individual met her. Tr. at 26, 34-35. The supervisor stated, "[the Individual]'s trying to save her...to bring her closer to God and the help her out to more of a Christian atmosphere and [to help her] become a Christian." Tr. at 28.

The supervisor stated that he did not know anyone as generous as the Individual, but that he was not surprised to learn the extent of the financial support the Individual gave the foreign national. The supervisor stated that he believed the Individual was honest, reliable and trustworthy and he had no concerns regarding the Individual's judgment. Tr. at 37-38.

4. The Individual's Church Witnesses

a. Church Witness No. 1

The Individual's first witness from his church stated that he has known the Individual for nearly 17 years and that he and the Individual also used to work together. Tr. at 41-42. He stated that he sees the Individual several times per week. He stated that they take part in church activities together and other activities such as fishing, bowling, and hunting. Tr. at 43. He added, "the Individual]'s been part of our family." *Id.* This witness stated that he was aware that the Individual had been in contact with a woman in a foreign country. Tr. at 44. He stated that he learned shortly before the hearing the details of how the Individual had met the foreign national. He described his initial reaction as "mild shock" and believed it was "extraordinary that [the Individual] would have taken that step." Tr. at 44.

According to this witness, the Individual wanted to share his faith but had difficulty doing so because he was an introverted person and his friends and co-workers were unresponsive. Tr. at 45. He added, "[the Individual] was frustrated. He spent years with some people sharing his faith. It didn't seem to be going anywhere. He just wanted to reach out. He knew there was a need for those who were involved in things like the cybersex...They needed to know that there was something else that could be what was missing in their lives. And that, he knew, was Jesus...So he took it upon himself to make that attempt through that website." Tr. at 45-46.

The witness stated that the Individual was an extremely generous person and that he was not surprised that the Individual had given money to a person he had never met. Tr. at 64-65. He stated that he believed the Individual was honest, reliable and trustworthy and he was certain that the Individual would not resume his relationship with the foreign national. Tr. at 65-66, 72.

b. Church Witness No. 2

The Individual's second church witness stated that she has known the Individual since 1990. Tr. at 75. She stated that when she first met the Individual, he was "very quiet...compassionate...[He] became like the adopted uncle for my family, my children. [He was] very willing to help...kind of an introvert a little bit." Tr. at 76.

She stated that the Individual originally told her about his relationship with the foreign national "three or four years ago." Tr. at 76. She stated that her understanding of the relationship was that the Individual was "a friend in discipleship, discipling [sic] a new believer in Christ...it was [a relationship] of helping and encouraging and [being] compassionate." Tr. at 76-77. According to the witness, the Individual's relationship with the foreign national ended because the Individual realized that the foreign national was not making the right choices. She stated, "sometimes you have got to let somebody go to grow." Tr. at 77. She added that she did not believe the Individual would resume the relationship. Tr. at 78.

This witness stated that she has been involved in Church activities with the Individual and that, even knowing the details of how he met the foreign national, she has no concerns about the Individual working with the youth of the church, including her own children. Tr. at 78, 86. She stated that the Individual is a generous person and that it was not out of character for him to provide significant financial support to someone, even someone he had never met in person. Tr. at 87. Finally, she stated that she believed the Individual to be honest, reliable and trustworthy and stated that he has "a more trusting heart than [others]." Tr. at 87-88.

5. The Individual's Mother

The Individual's mother described him as a very generous person and stated that his providing financial assistance to the foreign national was not out of character for him. Tr. at 95. She stated that the Individual had discussed the relationship with her and her understanding was that it was one of "one Christian reaching out to another Christian, to someone who wanted to find Jesus. He was helping her with that." Tr. at 96. The Individual's mother described her reaction to learning about the Individual's relationship with the foreign national. She stated,

I totally believed in what he was doing. I felt that the only reason that he met her was to reach out to her. And I felt very confident in that. And, again, because it was just over the internet, and you know, she was in another country, then it wasn't a big deal to me just because he was reaching out as one Christian to another.

Tr. at 98. The Individual's mother stated that the relationship is over. She said, "when [the Individual] first came and told [me] that he was looking to resolve it, we discussed it...then he

told [me] later that he had resolved it, and it was ended. And she knew it was over, and there was no more.” Tr. at 97.

III. STANDARD OF REVIEW

The regulations governing the Individual’s eligibility for an access authorization, also referred to as a security clearance, are set forth in 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” An individual is eligible for access authorization if such authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the DOE may suspend an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.” 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the hearing officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the hearing officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” *Id.* § 710.27(a).

IV. ANALYSIS

A. The Security Concern

The derogatory information concerning Criterion L centers on the Individual’s relationship with a foreign national. Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

The main security concern here is not that the Individual was in contact with, and financially supported, a foreign national. Rather, the primary Criterion L concern is that the Individual did not exercise the type of judgment and caution the DOE expects of individuals holding security clearances and that he may not do so in the future. The Individual’s relationship with the foreign national is the means by which DOE became aware of that concern. The relationship itself is,

however, a secondary concern in that it may make the Individual vulnerable to blackmail, coercion or duress. Given the circumstances of this case, I find that the LSO had ample grounds for invoking Criterion L. Thus, the only issue to be resolved is whether the security concerns have been adequately mitigated.

B. Mitigating Factors

I believe that the Individual has ended his relationship with the foreign national and that he has not provided her with financial assistance since June 2006. The Individual testified to that effect, and his witnesses, who I believe testified honestly and candidly, corroborated his testimony. Furthermore, his financial records indicate that he has not made any large withdrawals of money from his accounts, as he did when he was providing financial assistance to the foreign national. The Individual's witnesses also corroborated his testimony that his motivations in helping the foreign national were religious in nature. Each of the witnesses stated that they were aware of the relationship, including how the Individual met the foreign national and the extent of the financial assistance the Individual provided, and stated that they did not have concerns about his judgment or reliability. Beyond this, however, there is little in the record which serves to mitigate the security concerns raised by the Individual's trust in a complete stranger.

I am unable to find that the Individual has resolved the Criterion L concerns raised by that unusual trust of a stranger. First, despite the testimony of the Individual and his witnesses, I am not convinced that the Individual understands the one-sided nature of his relationship with the foreign national. Nor am I convinced that the Individual will be able to manage his future relationships with others without engaging in behavior which may make him vulnerable to coercion, duress, or blackmail in the future. Over the course of four years, the Individual provided \$80,000 to a woman in a foreign country who he never met based on his desire to help her with her purportedly significant debts and to keep her from resuming her work on a cybersex website. The Individual blindly trusted a complete stranger, taking everything she told him at face value. Leaving aside my doubts as to whether this particular woman took advantage of the Individual, his actions were outside the norm of behavior expected of security clearance holders and call into serious question his judgment and his reliability. The Individual's behavior in this case causes me to wonder whether in the future someone with more malevolent intentions could exploit his generosity and desire to help people in need in order to gain his trust and possibly obtain sensitive information. Second, the Individual's lack of diligence in reporting his continuing contact with a foreign national raises serious concerns about his reliability. The Individual began his relationship with the foreign national in 2002, but did not report that relationship to the LSO until 2004. His explanation that he had forgotten about the reporting requirement until after completing a security refresher "a couple years down the road" demonstrates a lax attitude toward security requirements which is unacceptable in individuals holding security clearances. His statement that he did not completely understand the ramifications of his failure to report the relationship until undergoing a third PSI does little to alleviate the concern. Finally, although I believe that the Individual has ended the relationship, it is obvious from his statements and demeanor at the hearing that doing so was extremely difficult for him and that he still cares for the well-being of the foreign national and her child. This also raises a concern that the Individual may behave in a manner that makes him subject to coercion or duress.

In cases where an Individual's behavior has called into question his judgment and reliability, our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating those concerns. *See Personnel Security Hearing*, Case No. VSO-0499, 28 DOE ¶ 82,850 (2002). In this case, the Individual's actions in disclosing to the LSO his ongoing contact with a foreign national and ultimately ending the relationship are positive steps in establishing a pattern of responsible behavior. However, given the relatively short time since the Individual ended his four-year relationship with the foreign national, I do not believe that enough time has passed for the Individual to have demonstrated a pattern of responsible behavior sufficient to mitigate the security concerns in this case.

I find that the circumstances in the Individual's case present a greater-than-average risk that he may engage in conduct that will make him vulnerable to "pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criterion L. I also find insufficient evidence in the record to fully resolve that concern. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's access authorization should not be restored at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: June 26, 2007